

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER

☐

DATE

January 27, 2022

MOTOR CARRIER MATTER

☐

DOCKET NO.

2021-291-A

UTILITIES MATTER

☒

ORDER NO.

**SUBJECT:**

DOCKET NO. 2021-291-A - Generic Docket to Study and Review Prefiled Rebuttal and Surrebuttal Testimony in Hearings and Related Matters - Staff Presents for Commission Consideration Issues Related to Prefiling of Surrebuttal Testimony Before the Commission.

**COMMISSION ACTION:**

The allowance of surrebuttal testimony at the Commission has been questioned in recent months, and is one of the matters on which the Commission recently sought comments by parties appearing before the Commission. Comments were received on the subject, both pro and con, and these have prompted me to make this Motion before the Commission at this time.

Rebuttal testimony is a matter of right, however, surrebuttal testimony is discretionary, as stated by the South Carolina Supreme Court in the case of *Palmetto Alliance v. South Carolina Public Service Commission*.

Surrebuttal testimony must be viewed as somewhat different from other testimony, because if presented, it comes at a point in a proceeding where the parties have submitted their direct exhibits, and have also had an opportunity to respond to the other parties' testimony and exhibits. The theory and purpose of surrebuttal testimony is to respond to any new matters brought up by the moving party in its rebuttal testimony. However, if rebuttal is limited to responding to other parties' direct testimony, as intended, then surrebuttal testimony should rarely, if ever, be necessary. That is why, historically, surrebuttal testimony has only been presented as deemed necessary in the discretion of the Commission. To the extent that the Commission believes the privilege has been or is being abused, I believe that the Commission has the authority to curb such abuses by limiting the scope or presentation of surrebuttal testimony on a case-by-case basis. I also believe that the potential for such abuses may be limited in the same manner.

Accordingly, I move that the Commission adopt the following procedures, effective today:

1. When developing the procedural schedule where pre-filed testimony is anticipated, the Commission Clerk's Office shall establish a deadline wherein an appropriate party may file a Motion to Pre-File Surrebuttal Testimony. The Motion shall be filed after any rebuttal testimony has been pre-filed, and shall provide the Commission with good cause, if any, as to why the party should be allowed to pre-file surrebuttal testimony in the specific case.

2. A date shall also be set for the pre-filing of surrebuttal testimony, should the Commission grant the Motion.

3. Should the Motion be granted for good cause, the surrebuttal testimony may be pre-filed. If good cause is not shown, the moving party may not pre-file surrebuttal testimony.

In making this Motion, I am not accusing any party appearing before the Commission of abusing the use of surrebuttal testimony. I am stating that, since surrebuttal testimony is discretionary with the Commission, its presentation should be scrutinized and approved or rejected on a case-by-case basis by using the methodology that I have proposed.

PRESIDING: J. Williams

SESSION: Regular

TIME: 2:00 p.m.

|             | MOTION                              | YES                                 | NO                                  | OTHER |                         |
|-------------|-------------------------------------|-------------------------------------|-------------------------------------|-------|-------------------------|
| BELSER      | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |       | Present in Hearing Room |
| CASTON      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |       | Voting via WebEx        |
| ERVIN       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |       | Voting via WebEx        |
| POWERS      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |       | Present in Hearing Room |
| THOMAS      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |       | Voting via WebEx        |
| C. WILLIAMS | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |       | Present in Hearing Room |
| J. WILLIAMS | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |       | Present in Hearing Room |

(SEAL)

RECORDED BY: J. Schmieding

